

ORIGINAL



0000129663

RECEIVED

2011 SEP 16 A 10:38

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

SEP 16 2011

DOCKETED BY [Signature]

FENNEMORE CRAIG
A Professional Corporation
Todd C. Wiley (Bar No. 015358)
3003 North Central Avenue
Suite 2600
Phoenix, Arizona 85012-2913
Telephone: (602) 916-5000

Attorneys for Valle Vista Property Owners Association, Inc.

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE
COMMISSION ON ITS OWN MOTION
INVESTIGATING THE FAILURE OF
TRUXTON CANYON WATER
COMPANY TO COMPLY WITH
COMMISSION RULES AND
REGULATIONS.

DOCKET NO. W-02168A-10-0247

**VALLE VISTA PROPERTY OWNERS
ASSOCIATION, INC.'S RESPONSE TO
NOTICE OF FILING INTERIM TARIFF**

Valle Vista Property Owners Association ("VVPOA") submits the following response to the Notice of Filing Interim Tariff filed by Truxton Canyon Water Company on September 1, 2011. VVPOA and its property owners respectfully request that the Commission reject Truxton's proposed interim tariff as unreasonable, unsupported and contrary to the best interests of the local community, VVPOA and its property owners.

I. BACKGROUND OF VVPOA.

A. The Valle Vista Development.

The Valle Vista development is a planned community with approximately 4,300 lots and 850 existing homes. Valle Vista is located about 15 miles northeast of Kingman, just off Historic Route 66. Valle Vista is located within Truxton's CC&N area. Valle Vista has a golf course, park, tennis court, and swimming pool, along with other recreational amenities. Those facilities and amenities are center pieces of the community and are a prime selling point for the community and its residents.

1 VVPOA is a *non-profit* corporation acting as the property owners association for
2 the Valle Vista development. The membership of VVPOA is comprised strictly of
3 property owners in Valle Vista, including most of Truxton's residential water customers.
4 Any cost increases imposed on VVPOA ultimately falls on its residential property owners
5 (i.e., Truxton's residential customers) through increased assessments, fees or prices for
6 services provided by VVPOA, including operation of the golf course.

7 **B. The Water Supply Agreement between VVPOA and the Trust.**

8 VVPOA has a long history with the Claude K. Neal Family Trust, which has
9 provided irrigation water to Valle Vista since 1972. The Trust is the principal
10 shareholder and owner of Truxton Canyon Water Company. Originally, the Neal family
11 came to the aid of the community and helped sustain the development by providing water
12 to the golf course. The original contract rate was \$0.7213 per 1,000 gallons and the
13 parties have been entering five year option periods for many years. On April 24, 2002,
14 VVPOA entered an Agreement with the Trust for irrigation water. Under that
15 Agreement, the Trust has provided irrigation water to VVPOA and has been doing so
16 since roughly 1972. The Trust and VVPOA entered the current agreement on April 24,
17 2002, and the parties agreed to a five year option period in December 2006. The current
18 Agreement between VVPOA and the Trust is set to expire on December 31, 2011.

19 **C. Just and Reasonable Water Rates Are Critical for the Ongoing**
20 **Viability of VVPOA and the Valle Vista Community.**

21 VVPOA intervened in this docket because of Staff's proposal to place the Trust
22 under Truxton and its impact on water service to VVPOA. As stated in testimony
23 provided by Mr. Bill Meehan on January 18, 2011, VVPOA has been hit extremely hard
24 by the economy, which has depleted financial reserves and left VVPOA in a precarious
25 financial position. VVPOA's cost of water for its various community facilities is critical
26 to its ongoing viability and that of the Valle Vista community.

1 It is important for the Commission to understand VVPOA's financial situation.
2 VVPOA's fiscal year runs May1-April 31. VVPOA collects its primary revenue at two
3 times during the year—renewal of golf membership fees in December and property owner
4 assessments in April-June. As a result, VVPOA is dependent on those sources of revenue
5 and must budget those funds for operation of the golf course, swimming pool and other
6 amenities during the entire year. Normally an association like VVPOA maintains a
7 reserve account of at least \$100,000-150,000 for unexpected and unbudgeted repairs and
8 other items. For the last several years, VVPOA has operated on a shoe-string budget
9 without any reserve account. For the current fiscal year, VVPOA has maintained a
10 reserve account of \$32,000, which is the first time in the last three years that VVPOA has
11 been able to fund a reserve account.

12 VVPOA's operating expenses average approximately \$85-90,000 per month.
13 Based on the timing of the revenue collections noted above, VVPOA experiences several
14 months during the year where revenue is far exceeded by expenses. For the most recent
15 fiscal year, VVPOA spent \$26,000 more than budget, despite cutting operating expenses
16 in 2010 by \$33,000. That savings resulted from deferring needed replacements and
17 improvements and using volunteers for labor. Even worse, revenue in 2010 was
18 \$1,298,644, but revenue in 2011 was \$1,139,360, a decline of \$159,284.00. VVPOA has
19 been able to continue operations only by maintaining tight controls over costs and
20 expenses. Truxton's demands for unreasonable price increases have placed VVPOA on
21 the precipice of financial disaster. Because these issues are vitally important to the
22 community, VVPOA requests that the Commission consider the recommendations set
23 forth below in the best interests of residential homeowners and customers in Valle Vista.

24 **II. TRUXTON'S PROPOSED INTERIM COMMODITY RATE IS NOT JUST**
25 **OR REASONABLE.**

26 In its proposed interim tariff, Truxton seeks to increase VVPOA's commodity rate

1 from \$1.1437/1000 gallons under the Water Supply Agreement (“Agreement”) between
2 VVPOA and the Trust to \$1.45/1000 gallons, a 40% percent increase. *In its filing,*
3 *Truxton did not provide any cost of service study or other justification supporting such*
4 *tariff rate for VVPOA.* Truxton did not even bother to explain its proposed tariff rate, let
5 alone substantiate it. Thus, Truxton’s commodity rate should be rejected as unsupported
6 and in excess of Truxton’s actual costs of providing service to VVPOA.

7 Presumably, Truxton arbitrarily set VVPOA’s tariff rate at the same level as the
8 first tier of Truxton’s existing tariff for residential customers, which is \$1.45/1000 gallons
9 for the first 5,000 gallons of water used. Rather than allowing a utility to arbitrarily set a
10 commodity rate without any justification, the Commission should set VVPOA’s rate
11 based on cost of service, a point acknowledged by Chief Counsel for the Commission at
12 the August 16, 2011 open meeting.¹ Here, the existing record is replete with evidence
13 relating to Truxton’s costs of providing service to VVPOA, which is substantially below
14 the proposed rate of \$1.45/1000 gallons. On September 1, 2010, the Trust and Truxton
15 entered a “Water Supply Agreement for Truxton Canyon Water Company” (copy attached
16 as Exhibit A). Under that Agreement, the Trust provides water to Truxton for use in
17 providing water utility service to Truxton’s customers. Paragraph 7 of that Agreement
18 establishes Truxton’s cost of purchasing water for its customers, including VVPOA:

19 Truxton Canyon shall pay to Trust all metered water deliveries at the agreed
20 upon delivery points at the rate of \$1.01 per 1000 gallons delivered....Said
21 price will be based upon the market value of the water considering the
22 operation, maintenance and capital costs to Trust, plus a return on the value
of the equipment and facilities necessary to provide service under this
Agreement.²

23
24 ¹ See also *Principles of Water Rates, Fees and Charges, Manual of Water Supply*
25 *Practices*, American Water Works Association (5th Ed. 2000) at p. 49 (“The basic premise
in establishing adequate rate schedules that are equitable to different customers is that
rates should reflect the cost of providing water service.”)

26 ² Water Supply Agreement for Truxton Canyon Water Company at ¶ 7.

1 As of September 1, 2010, Truxton's cost of providing water to its customers is
2 \$1.01/1000 gallons, *which covers the fair market price for the water, the Trust's*
3 *operating and maintenance costs and a return on the Trust's plant and assets.*

4 As stated in the surrebuttal testimony of Staff (Alexander Igwe), those terms will
5 also apply to Truxton's provision of water to VVPOA:

6 Mr. Neal has confirmed that the Trust is willing to supply Truxton with
7 additional 200 million gallons of water to enable it to continue to meet
8 water demand from the Golf Course, at the rate of \$1.01 per 1,000-gallons.
9 As of September 1, 2010, the Trust has amended its water supply agreement
10 with Truxton to the rate of \$1.01 per 1,000-gallons for purchased water.
11 Because the Trust Agreement with the Golf Course will subsist under the
12 Company's proposal, Truxton will continue to charge the Golf Course
13 \$1.1437 plus applicable tax per 1,000 gallons. This proposal will enable
14 Truxton to earn approximately \$26,700 per year from the Golf Course.³

15 Under these circumstances, the commodity rate applicable to VVPOA should be
16 based on Truxton's cost of service, which is \$1.01/1000 gallons. At 150,000,000 gallons
17 of water provided to VVPOA, Truxton would incur \$151,500 in water costs (150,000 x
18 \$1.01). A tariff rate of \$1.1437/1000 gallons would provide Truxton with an operating
19 margin of 14%. For 150,000,000 gallons, Truxton would sell that water to VVPOA for
20 \$171,555 (150,000 x \$1.1437), plus taxes, which is a \$20,000 profit to Truxton. At
21 Truxton's proposed interim rate of \$1.45/1000 gallons, Truxton would receive \$217,500
22 (plus taxes), *or a \$66,000 profit (44% profit margin).* Under these circumstances,
23 Truxton's proposed interim rate should be summarily rejected.

24 Truxton's dealings with the Trust also raise the specter of ratepayers paying for
25 affiliate profit, an issue that the Commission has raised in other dockets. Here, the
26 \$1.01/1000 gallons rate paid by Truxton to the Trust includes recovery of the Trust's

³ Surrebuttal Test. of A. Igwe at 8 (Docket No. W-02168A-10-0247). Mr. Igwe's
testimony was based on the following calculation. At 200,000,000 gallons of water
provided to VVPOA, Truxton would incur \$202,000 in costs (200,000 x \$1.01). In turn,
Truxton would then sell that water to VVPOA for \$228,740 (200,000 x \$1.1437),
resulting in \$26,700 in profit (plus taxes).

1 operating and maintenance costs and a return on the Trust's plant and assets.⁴ Of course,
2 Truxton is owned by the Trust, which means that the owners of Truxton are profiting
3 twice from the sale of water to Truxton---once in the \$1.01 rate paid by Truxton and
4 twice in the rate paid by Truxton's customers. The Commission has expressed concern
5 over ratepayers being charged for affiliate profit, which is what Truxton proposes here.

6 Truxton's proposed commodity rate also should be rejected as unreasonable and
7 unjust for VVPOA. Such rate will put VVPOA on the financial brink. Assuming that
8 VVPOA uses 150 million gallons per year, Truxton's proposed tariff would result in
9 \$62,400 in minimum monthly charges, plus \$217,500 in commodity charges at
10 \$1.45/1000 gallons, which would total \$279,900—not including state sales taxes.
11 VVPOA and its property owners simply cannot afford such price increases.

12 Finally, the Commission should reject Truxton's attempts to increase VVPOA's
13 rates for the simple reason that the Trust and Truxton have failed to provide adequate
14 water service to VVPOA in July, August and September 2011. In July 2011, two of the
15 Trust's wells in the Hackberry Well Field and the Valley Well, which is used to provide
16 sufficient or adequate water service to VVPOA during the summer, failed and went out of
17 service. The outages occurred again in August 2011. As a result, the Trust failed to
18 provide water service to VVPOA for a period of several weeks in July and August 2011,
19 which has caused substantial monetary and other harms to VVPOA. To make matters
20 worse, Truxton and the Trust again failed to provide water to VVPOA from September 2-
21 7, 2011 (the Valley Well went out of service again). In total, VVPOA has suffered 34
22 days of intermittent and limited water service, which has dramatically impacted
23 VVPOA's operations.⁵ VVPOA has suffered lost revenue from lack of water on the golf

24 ⁴ Water Supply Agreement for Truxton Canyon Water Company at ¶ 7.

25 ⁵ Under the Agreement with the Trust, VVPOA pays for water in advance each month,
26 which means that VVPOA paid for water that the Trust/Truxton never provided. VVPOA
intends to offset those payment amounts against future water bills from Truxton.

1 course and park, and VVPOA is now faced with substantial costs to re-seed resulting
2 from grass dying from lack of water. Initial estimates place the cost at re-seeding the
3 dead areas caused by the Trust/Truxton at roughly \$48,400 (not including additional costs
4 for water and labor).

5 **III. VVPOA'S PROPOSED COMMODITY RATE.**

6 Ultimately, VVPOA believes that its commodity rate should be based on Truxton's
7 cost of water of \$1.01 per 1,000 gallons. Truxton has not demonstrated any increased
8 costs of service for VVPOA. To the contrary, VVPOA uses water at off-peak times.
9 VVPOA primarily waters at night and maintains its own 500,000 gallon storage tank.
10 Filling the tank may take place day and night during high usage periods in the summer,
11 but water can be received at night during the rest of the year.

12 Under these circumstances, it is critical that VVPOA's commodity rate—both on
13 an interim basis and in Truxton's upcoming rate case—be set at a level that will allow
14 VVPOA to continue operations. In no uncertain terms, VVPOA is a significant revenue
15 source for Truxton. As such, it is critical that the Commission set VVPOA's rates at a
16 level that will allow VVPOA to continue operations and provide revenue for Truxton.

17 Based on Truxton's \$1.01 cost of water, VVPOA believes that a commodity rate of
18 \$1.1437 per 1,000 gallons is just, reasonable and fully supported by the evidentiary
19 record. Truxton's lack of evidence supporting its proposed \$1.45 rate precludes the
20 Commission from adopting Truxton's rate. In the spirit of compromise, however,
21 VVPOA is willing to accept a commodity rate of \$1.20 per 1,000 gallons, assuming that
22 the Commission rejects Truxton's proposed monthly minimum charges and rejects
23 Truxton's deposit requirement.

24 **IV. THE COMMISSION SHOULD REJECT TRUXTON'S PROPOSED**
25 **MONTHLY MINIMUM CHARGE.**

26 In its proposed interim tariff, Truxton seeks to impose on VVPOA the exorbitant

1 charge of \$5,200 per month as a "monthly minimum flat charge." That proposed charge
2 amounts to \$62,400 in annual flat charges without delivery of any water. Truxton's
3 failure to provide any evidence supporting that charge requires the Commission to deny it.

4 Further, that proposed charge is unjust and unreasonable. VVPOA currently uses
5 five meters for irrigation water service from the Trust (and now Truxton)—a 6" meter
6 that supplies the golf course on the #8 fairway, a 4" meter that supplies VVPOA's
7 500,000 gallon storage tank, a 2" meter that provides irrigation to VVPOA's front
8 entrance, a 2" meter that supplies the community park and pool and a 3/4" meter that
9 provides irrigation for certain plant areas. *The Trust did not charge VVPOA any monthly*
10 *meter or minimum charges for water service.* Under Truxton's existing tariff, the
11 Company charges \$650/month as a minimum monthly charge for a 6" meter, \$325/month
12 for a 4" meter, \$104/month for a 2" meter and \$19.50/month for a 3/4" meter. For
13 VVPOA's five meters, those charges total \$1,202.50 in combined monthly minimum
14 charges under Truxton's tariff. At \$5,200/month, Truxton seeks to impose a 432%
15 increase on VVPOA compared to those approved monthly charges. The Commission
16 should reject Truxton's proposed \$5,200 monthly minimum charge and implement the
17 approved monthly minimum charges by meter size under Truxton's existing tariff.

18 V. **THE COMMISSION SHOULD REJECT TRUXTON'S PROPOSED**
19 **DEPOSIT AND SERVICE CHARGES.**

20 Finally, Truxton seeks to require VVPOA to post a deposit equal to 2.5 times
21 VVPOA's average bill. Under the existing Agreement with the Trust/Truxton, VVPOA
22 pays approximately \$20,500 per month for irrigation water. As such, Truxton seeks to
23 require VVPOA to post a deposit totaling \$51,250. That request is outrageous and there
24 is no justification or basis for imposing such a deposit requirement on VVPOA.

25 The Commission should reject this deposit proposal for several reasons. To start,
26 there simply is no justification for requiring VVPOA to post such a deposit. VVPOA has

1 been a customer of the Trust since 1972. A.A.C. R14-2-403(B)(1) provides that a "utility
2 may require a deposit from any new applicant for service." VVPOA is not a "new
3 applicant" for service as envisioned under the Commission rules governing deposits.
4 Rather, VVPOA has been a customer of the Trust/Truxton for nearly 40 years with a
5 demonstrated payment history. Further, VVPOA simply can't afford to post a \$50,000
6 deposit for the reasons noted above. Given VVPOA's status as a long-time customer of
7 the Trust/Truxton, imposing a deposit requirement on VVPOA under these circumstances
8 would turn the Commission's rules on their head.

9 Finally, Truxton's proposal for a \$50,000 deposit is a thinly-veiled attempt to force
10 VVPOA to finance Truxton's operations. At the August 16, 2011 open meeting, Truxton
11 raised a concern for its monthly cash flow. Under the existing Agreement with the Trust,
12 VVPOA pays for water service in advance on the first of each month. As a customer of
13 Truxton and starting on January 1, 2012, however, VVPOA will pay for water following
14 Truxton's meter reads and bills (just like a typical utility customer). Thus, Truxton was
15 concerned that it would not have sufficient cash flow for operations because VVPOA no
16 longer would be paying in advance. It begs the question as to how VVPOA's advance
17 payments to the Trust would harm Truxton's cash flow. Under the prior Agreement,
18 VVPOA made payments to the Trust, not Truxton. Assignment of the Agreement to
19 Truxton should help, not hamper, Truxton's cash flow. With VVPOA as a customer,
20 Truxton will now have \$15,000-20,000 per month in additional revenues.

21 At that open meeting, the Commission raised the possibility of a deposit
22 requirement to address cash flow issues resulting from Truxton adding VVPOA as a
23 customer and the timing of VVPOA's payments. VVPOA believes that the intent of such
24 deposit was to provide a small deposit to provide Truxton with additional cash flow to
25 transition VVPOA as a customer in January 2012. VVPOA certainly did not envision a
26 \$50,000 deposit, which is nothing more than an effort to take advantage of VVPOA.

1 Truxton's proposal seeks to force VVPOA to provide cash flow for utility
2 operations in the guise of a deposit. A deposit is not designed to fund utility operations.
3 Rather, the purpose of deposits is to control a utility's bad debt by providing security for a
4 customer's payments. To the extent Truxton and the Trust have cash flow issues when
5 VVPOA is transitioned to service under Truxton's tariffs in January 2012, Truxton and its
6 owners should bear those burdens, **not VVPOA**. The net result of Truxton's deposit
7 requirement would be that VVPOA gives \$50,000 to Truxton so that Truxton can pay the
8 Trust for water in January/February 2012 while VVPOA foregoes the use of that money.
9 VVPOA is not aware of any circumstances where the Commission has ordered customers
10 to finance a utility's operations in the form of a deposit, let alone where customer deposits
11 are used to pay dividends or payments to the utility's owner.

12 Further, forcing VVPOA to provide such a deposit is unnecessary for purposes of
13 Truxton's cash flow. The Water Supply Agreement between Truxton and the Trust
14 provides that "[o]n or before the 10th day of each month, Trust shall furnish to Truxton
15 Canyon a statement for the water delivered during the preceding month. Payment for all
16 said deliveries shall be made monthly by Truxton Canyon to Trust....within 15 days from
17 the receipt of the statement...."⁶ Thus, Truxton's payments to the Trust will be due at
18 approximately the same time as VVPOA's payments are due to Truxton for water service
19 starting on January 1, 2012.

20 Finally, the intent of the Commission's deposit rules is that deposits (residential)
21 will be refunded after "12 consecutive months of service without being delinquent..."⁷
22 The deposit also is required to earn interest at a minimum rate of 6%.⁸ Given Truxton's
23 financial situation, there is no guarantee that Truxton will have sufficient income to
24

25 ⁶ Water Supply Agreement between Truxton and Trust, at 3, ¶ 8.

26 ⁷ A.A.C. R14-2-403(B)(5).

⁸ A.A.C. R14-2-403(B)(3).

1 refund VVPOA's deposit after 12 months of timely payments. VVPOA faces a
2 substantial risk that such inflated deposit may never be refunded to VVPOA.

3 VVPOA respectfully requests that the Commission deny Truxton's proposed
4 deposit requirement. In the event that the Commission decides to impose a deposit
5 requirement on VVPOA, the amount of such deposit should not exceed \$5,000 and the
6 Commission should order that Truxton maintain such deposit in a separate, interest
7 bearing account, subject to refund following twelve months of timely payments.

8 **VI. CONCLUSION.**

9 As set forth above, VVPOA and its property owners respectfully request that the
10 Commission adopt VVPOA's proposed interim commodity rate and reject Truxton's
11 proposed monthly minimum charges and deposit requirement.

12 RESPECTFULLY SUBMITTED this 16th day of September, 2011.

13 FENNEMORE CRAIG

14
15 By 

16 Todd C. Wiley
17 3003 North Central, Suite 2600
18 Phoenix, AZ 85012
19 Attorneys for Valle Vista Property Owners
20 Association, Inc.

21 ORIGINAL and 13 copies
22 of the foregoing was filed
23 this 16th day of September, 2011,
24 with:

25 Docket Control
26 Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

1 COPY of the foregoing
2 was hand-delivered this 16th
3 day of September, 2011, to:
4 Chairman Gary Pierce
5 Arizona Corporation Commission
6 1200 W. Washington St.
7 Phoenix, AZ 85007
8 Commissioner Brenda Burns
9 Arizona Corporation Commission
10 1200 W. Washington St.
11 Phoenix, AZ 85007
12 Commissioner Paul Newman
13 Arizona Corporation Commission
14 1200 W. Washington St.
15 Phoenix, AZ 85007
16 Commissioner Sandra Kennedy
17 Arizona Corporation Commission
18 1200 W. Washington St.
19 Phoenix, AZ 85007
20 Commissioner Bob Stump
21 Arizona Corporation Commission
22 1200 W. Washington St.
23 Phoenix, AZ 85007
24 Antonio Gill
25 Aide to Chairman Gary Pierce
26 Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007
Tracy Hart
Aide to Commissioner Brenda Burns
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007
Jennifer Ybarra
Aide to Commissioner Paul Newman
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007
...
...


1 Katherine Nutt
Aide to Commissioner Sandra D. Kennedy
2 Arizona Corporation Commission
1200 W. Washington Street
3 Phoenix, AZ 85007

4 Trisha Morgan
Aide to Commissioner Bob Stump
5 Arizona Corporation Commission
1200 W. Washington Street
6 Phoenix, AZ 85007

7 Kimberly Ruht
Legal Division
8 Arizona Corporation Commission
1200 W. Washington
9 Phoenix, AZ 85007

10 A copy of the foregoing
was mailed this 16th
11 day of September, 2011, to:

12 Steve Wene
Moyes Sellers Ltd.
13 1850 N. Central Ave., Suite 1100
Phoenix, AZ 85004

14
15 
16

17 2491539.1
18
19
20
21
22
23
24
25
26

EXHIBIT A

WATER SUPPLY AGREEMENT FOR TRUXTON CANYON WATER COMPANY

This Agreement, made as of the 1st day of September, 2010, by and between CLAUDE K. NEAL FAMILY TRUST, an Arizona corporation (hereinafter referred to as "Trust"), and TRUXTON CANYON WATER COMPANY, an Arizona corporation (hereinafter referred to as "Truxton Canyon").

WITNESSETH:

WHEREAS, Trust has certain water rights and owns and operates water production, collection, transmission and certain pressure facilities in portions of Mohave County, Arizona, and

WHEREAS, Truxton Canyon owns and operates a public water distribution system in and near Hackberry and the Hualapai Valley area.

NOW, THEREFORE, in consideration of the premises and mutual covenants of the parties hereto, respectively, the parties hereby agree as follows:

1. During the term of this Agreement, Trust will furnish and deliver potable water to Truxton Canyon for the requirements of Truxton Canyon's customers located within Truxton Canyon's service area as hereinafter defined.
2. Delivery of the water under this Agreement shall be to mutually agreed upon delivery points through Trust owned and operated non-utility facilities.
3. Service under this Agreement shall be provided by Trust through an existing sixteen inch service line at peak delivery rate of 200 gallons per minute, not to exceed 288,000 gallons per day. Truxton Canyon shall utilize said water only within its service area. That area is defined to be the lesser of: (1) Truxton Canyon's certified area as authorized by the Arizona Corporation Commission; or (2) Truxton Canyon's service area as defined by the Arizona Department of Water Resources, as those areas may be modified from time to time. All water used by Truxton Canyon shall be consistent with Arizona law.

4. Trust is not obligated to provide any water storage for Truxton Canyon under this Agreement. Trust will use its best effort to maintain a continuous water supply to Truxton Canyon consistent with Paragraph 3 above. Truxton Canyon agrees to maintain adequate storage to meet its service obligations. In determining that storage request, Truxton Canyon recognizes the normal operational outages on the Trust system. In the event Truxton Canyon needs water quantity, quality or reliability greater than set forth in the Agreement, it shall give written notice of those requirements to Trust not less than one year prior to the anticipated need. Trust will endeavor to provide that service if, in the sole opinion of Trust, such service is technically, legally, and commercially feasible. Nothing in this Agreement shall be interpreted to prohibit Truxton Canyon from obtaining its own replacement or supplemental water supply.
5. Trust, at its expense, shall install and maintain water meters at mutually agreed upon delivery points. The meters shall be calibrated to the satisfaction of both parties and shall be recalibrated within a reasonable time after request made by either party, in accordance with the following procedures:
 - a. The recalibration shall be done in the presence of the authorized representative of each party and the cost shall be borne equally by both parties.
 - b. If the calibration discloses inaccuracy exceeding 3%, the consumption recorded during the previous 30 days, or the part thereof which may be subsequent to the last preceding recalibration, shall be corrected using the recalibration data.
 - c. In the event any meter ceases registration or it is evident that the inaccuracy has existed for a period shorter than 30 days, correction shall be made based upon estimates from other meters or from other proper data.
 - d. Corrections so made shall be accepted by both parties as adjusting all claims arising out of such inaccuracy.
6. Trust shall test, or cause to be tested, and treat as necessary all water subject to this Agreement. Testing and treatment standards shall be those established by the Arizona Department of Health Services or other appropriate

regulatory agency. In the event treatment of the water is required, Trust may, at its option, undertake such treatment and make such capital investments as is necessary to comply with the water quality requirements of the appropriate regulatory agency(s). In that event, Trust shall own and operate or cause to be operated the necessary treatment facilities. The capital, operating and maintenance cost associated with said treatment will be recovered by adjustments in the water purchase price as set forth in Paragraph 8 below. The testing and water quality compliance beyond the point of delivery by Trust shall be the responsibility of Truxton Canyon.

7. Trust retains the right to take bulk water deliveries at any standpipe adjacent to delivery points under this Agreement. Trust agrees that 1) it will not take such water deliveries for use within Truxton Canyon's service area or if Truxton Canyon needs the available water for its fixed or standpipe customers, 2) all water taken by Trust shall be metered and not billed to Truxton Canyon, and 3) the water price to Truxton Canyon under Paragraph 8, as adjusted from time to time, shall not reflect any increase in capital, operation or maintenance costs caused by the volume of water used by Trust.
8. Truxton Canyon shall pay to Trust all metered water deliveries at the agreed upon delivery points at the rate of \$1.01 per 1000 gallons delivered. That price shall be subject to review on each anniversary date of the Agreement, but will not be changed except upon 90 days written notice to Truxton Canyon. Said price will be based upon the market value of the water considering the operation, maintenance and capital cost to Trust, plus a return on the value of the equipment and facilities necessary to provide service under this Agreement.
9. On or before the 10th day of each month, Trust shall furnish to Truxton Canyon a statement for the water delivered during the preceding month. Payment for all said deliveries shall be made monthly by Truxton Canyon to Trust at its general office in Kingman, Arizona, within 15 days from the receipt of the statement therefore, which payment shall be in conformity with the charges provided for in this Agreement.

10. In the event either party, by reason of an uncontrollable force as hereinafter defined, is rendered unable, wholly or in part to perform its obligations under this Agreement (other than its obligations under this Agreement to pay money), then upon said party giving notice and particulars of such uncontrollable force in writing to the other party promptly after learning thereof, the obligations of said party so far as they are affected by such uncontrollable force shall be suspended during the continuance of any inability so caused but for no longer period and the effects of such cause shall, so far as possible, be remedied with all reasonable dispatch. However, nothing contained herein shall be so construed as to require a party to settle any strike or labor dispute in which it may be involved. The affected party shall not be responsible for its delay in performance under this Agreement during delays caused by an uncontrollable force nor shall such uncontrollable force give rise to a claim for damages or constitute default, except for the obligation to make payment for bills rendered pursuant to Paragraph 9 hereof.

An "uncontrollable force" shall mean an act of God, act or omission of government, government priority, failure of or threat of failure of facility, scheduled or unscheduled maintenance and repair, labor or material shortage, act or omission of civil or military authority, labor dispute, strike, lockout or other industrial disturbance, act of the public enemy, war, blockage, insurrection, riot, epidemic, landslide, earthquake, fire, storm, lightning, flood, washout, civil disturbance, restraint by court order or public authority, action or nonaction by or inability to obtain necessary authorization or approval from any governmental agency or authority, and any other act or omission similar to the kind herein enumerated not within the control of the affected party and which by the exercise of due diligence said party is unable to overcome.

11. Trust, its officers, directors and employees shall not be liable to Truxton Canyon or to any other person whomsoever for any death, injury or damage that may result to any person or property by or from any cause whatsoever for the provision, or failure to provide any water or service under this Agreement, unless caused by the willful misconduct of Trust, its officers, directors or employees. Truxton Canyon shall indemnify and hold Trust, its officers,

directors and employees, harmless from and defend them and each of them against any and all claims, losses or judgments for a death of, or injury to, any person, or for damage to any property whatsoever incurred in the provision, or failure to provide, any water or service under this Agreement, unless caused by the willful misconduct of Trust, its officers, directors or employees. In the event any action or proceeding is brought against Trust, its officers, directors or employees, by reason of any such claim, Truxton Canyon, upon notice from Trust, shall resist or defend such action or proceeding at its expense.

12. Trust shall not be required to perform any public service corporation functions or services as a result of this Agreement. If at any time, the Arizona Corporation Commission, or any other state or federal commission or body should attempt or threaten to exercise jurisdiction over Trust for the purpose of regulating sales or water made by it, whether to Truxton Canyon or any other person, firm or corporation, or for the purpose of examining the books, accounts or other internal affairs of Trust in connection with such sales or any thereof, Trust may notwithstanding Paragraph 14, notify Truxton Canyon of such facts, and this Agreement shall be deemed terminated sixty (60) days following receipt of such notice by Truxton Canyon. Waiver by Trust of the exercise of jurisdiction by any regulatory commission or body shall not be deemed a waiver with respect to any subsequent or additional regulation.
13. This Agreement shall remain in full force and effect for a term of one year from the date hereof and shall be automatically extended from year to year thereafter until terminated by either party hereto by giving written notice of such termination to the other. Such notice shall specify the date of termination and shall be given not less than sixty (60) days prior to the termination date.
14. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.
15. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but each such counterpart shall together constitute but one Agreement.

16. Written notice to either party concerning this Agreement shall be sent by certified mail, except that invoices may be sent by first class mail. Written notice and communications to Truxton Canyon shall be addressed to:

TRUXTON CANYON WATER COMPANY
7313 E. Concho Drive, Suite B
Kingman, Arizona 86401

17. Written notice and communications to Trust shall be addressed as follows:

CLAUDE B. NEAL FAMILY TRUST
8103 E. Highway 66
Kingman, Arizona 86401

18. This Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective successors and assigns. Assignment shall only be upon written approval of the other party, which approval shall not be withheld or delayed unreasonably.

IN WITNESS WHEREOF, the parties hereto have caused this Water Supply Agreement to be executed as of the day and year first written.

CLAUDE K. NEAL FAMILY TRUST

By B. Marc Neal

B. Marc Neal, Trustee

TRUXTON CANYON WATER COMPANY

By B. Marc Neal

B. Marc Neal, President